

**Before the  
Federal Communications Commission  
Washington, DC 20054**

In the Matter of	)	
	)	
Southern Communications Services, Inc.	)	
d/b/a Southern LINC	)	
	)	
Application For Designation as an	)	Docket No. 96-45
Eligible Telecommunications Carrier in	)	
the State of Alabama	)	
	)	
Application For Designation as an	)	
Eligible Telecommunications Carrier in	)	
the State of Georgia	)	
_____	)	

**REPLY COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC.**  
**D/B/A SOUTHERN LINC**

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Date: March 1, 2005

## **SUMMARY**

The comments filed in response to the Southern Communications Services, Inc. d/b/a Southern LINC (“Southern LINC”) Petitions for designation as an ETC in the states of Alabama and Georgia (the “Petitions”) demonstrate that the FCC should grant the Petitions. Apart from the comments of TDS regarding the Blue Ridge Telephone service area in Georgia and the Rural LECs comments regarding the Ardmore Telephone service area in Alabama, none of the comments in opposition to the Petitions raise issues specific to Southern LINC or the Petitions themselves. Rather, they are merely impermissible collateral attacks on the FCC’s rules and policies regarding ETC designation based on issues the FCC is considering in a pending rulemaking proceeding. Indeed, the FCC has rejected these same impermissible collateral attacks when granting previous ETC petitions, because the only relevant issue is whether the petition satisfies the current requirements for ETC designation. With respect to the Blue Ridge Telephone service area in Georgia and the Ardmore Telephone service area in Alabama, Southern LINC, by a separate filing, will withdraw its request for designation in these areas, including the rate centers therein where it currently provides service. Accordingly, no party to this proceeding has identified a valid ground for delaying or denying the Petitions.

Southern LINC fully meets the goals of universal service by delivering to citizens in Alabama and Georgia the telecommunications choices and services that are available to citizens in the largest urban areas. Further, Southern LINC fully satisfies all of the requirements of the FCC’s current rules and well-established policies regarding ETC designation. Therefore, Southern LINC respectfully requests that the FCC grant Southern LINC’s Petitions for designation as an ETC in the states of Alabama and Georgia.

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**D/B/A SOUTHERN LINC**

Southern Communications Services, Inc. d/b/a Southern LINC ("Southern LINC"), by its attorneys, pursuant to a Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on February 1, 2005,<sup>1</sup> hereby submits these reply comments in response to the comments filed by CTIA – The Wireless Association ("CTIA"), CenturyTel of Alabama, LLC ("CenturyTel"), the Rural Local Exchange Carriers ("Rural LECs"),<sup>2</sup> and TDS

<sup>1</sup> *Parties Invited to Comment on Southern LINC Petitions for Designation as an Eligible Telecommunications Carrier in the states of Alabama and Georgia*, CC Docket No. 96-45, DA 05-269 (rel. Feb. 1, 2005). In addition, the Commission placed Southern LINC's Petitions for Designation as an Eligible Telecommunications Carrier in its non-rural service areas in Alabama and Georgia and rural and non-rural service areas in Florida on a separate Public Notice. *See Parties Invited to Comment on Southern LINC Petitions for Designation as an Eligible Telecommunications Carrier in the states of Alabama, Florida, and Georgia*, CC Docket No. 96-45, DA 05-143 (rel. Jan. 21, 2005). Southern LINC filed reply comments on February 18, 2005.

<sup>2</sup> The Rural LECs submitting the comments include TDS Telecommunications Corp. (TDS Telecom), parent company of Butler Telephone Company, Oakman Telephone Company,

Telecommunications Corp. (“TDS”).<sup>3</sup> CTIA’s comments support Southern LINC’s Petitions for Designation as an Eligible Telecommunications Carrier (“ETC”) in the rural portions of its service area in the state of Alabama and the rural portions of its service area in the state of Georgia (collectively, the “Petitions”), and CTIA urges the Commission to exercise its authority to grant ETC status to Southern LINC for the requested service territories in Alabama and Georgia.<sup>4</sup> The comments filed in opposition to the Petitions identify no valid grounds to delay or deny consideration of Southern LINC’s Petitions, as explained in more detail below. Rather, the comments in opposition to the Petitions are impermissible collateral attacks on, and criticisms of, current Commission rules and policies regarding ETC designations.<sup>5</sup> Therefore, Southern LINC

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Inc., and Peoples Telephone Company, Inc., and the following Alabama Rural LECs: Ardmore Telephone Company, Blountsville Telephone Company, Inc., Brindlee Mountain Telephone Company, Castleberry Telephone Company, Graceba Total Communications, Inc., GTC, Inc., Gulf Telephone Company, Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., National Telephone Company, Inc., New Hope Telephone Cooperative, Inc., Otelco Telephone LLC, Ragland Telephone Company, Roanoke Telephone Company, Inc., and Valley Telephone Company, LLC.

<sup>3</sup> Two additional commenters, Verizon telephone companies and Frontier Communications Companies, included comments on all pending Petitions before the FCC. *See* Comment of Verizon telephone companies at 1, fn. 2; *see also* Comments of Frontier Communications Companies at 1. As such, Southern LINC included responses to these comments in its February 18, 2005, reply comments.

<sup>4</sup> Comments of CTIA – The Wireless Association at 6 (“CTIA Comments”). CTIA filed comments on each separate Petition, as such, where necessary, Southern LINC will distinguish between the various CTIA comments by state.

<sup>5</sup> *See, e.g., Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 19 FCC Rcd 8689, ¶11 (2004) (rejecting collateral attacks on the standards for granting pricing flexibility when considering whether to grant a petition for pricing flexibility and clarifying that the FCC restricts itself “to determining whether the petitions satisfies the requirements for pricing flexibility”); *see also Amendment of Part 90 of the Commission’s Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band*, WT Docket No. 01-146, 19 FCC Rcd 18501, 18504-5, ¶10 (2004) (rejecting oppositions to applications that indirectly challenge earlier FCC decisions as procedurally flawed and impermissible collateral attacks).

respectfully requests the Commission proceed expeditiously and grant ETC status to Southern LINC for the requested service territories in Alabama and Georgia.

**I. THE FCC SHOULD GRANT SOUTHERN LINC'S PETITIONS WITHOUT DELAY**

The commenters opposing the Petitions have identified no valid basis for delaying consideration of the Petitions by the Commission. Rather, these commenters argue that the Commission should suspend consideration of all ETC petitions pending consideration of the *Recommended Decision*<sup>6</sup> of the Federal-State Joint Board on Universal Service ("Joint Board").<sup>7</sup> The Commission has repeatedly found that this argument is misplaced in ETC application proceedings, because grant of any ETC petition, including Southern LINC's Petitions, will neither influence the Joint Board's review of the pending universal service issues nor insulate the applicant from the application of any FCC rule change that might result from the pending rulemaking proceeding.<sup>8</sup> Therefore, the Commission should again reject any arguments in favor of supporting a stay of the Petitions pending resolution of the Joint Board's recommended decision.<sup>9</sup>

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<sup>6</sup> *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, 19 FCC Rcd 10800 (2004); *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) ("*Recommended Decision*").

<sup>7</sup> Comments of the Rural Local Exchange Carriers at 2-3 ("Rural LECs Comments"); see also Comments of TDS Communications Companies at 2-3 ("TDS Comments").

<sup>8</sup> *Federal-State Joint Board on Universal Service*, *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, 1569, ¶ 12 (2004) ("*Virginia Cellular Order*") ("the outcome of the Commission's pending proceeding before the Joint Board ... could potentially impact the support ... ETCs may receive in the future ... This Order is not intended to prejudice the outcome of that proceeding.").

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, *NPCR, Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the state of*

The Commission must decide ETC designation petitions on the rules as they currently exist,<sup>10</sup> and not on unsupported, vague speculation as to possible future harm to the Universal Service Fund (“USF”)<sup>11</sup> or possible rule changes.<sup>12</sup> It is well established that the Commission must evaluate Southern LINC’s Petitions using the same standards as those applied to similarly situated ETC applicants,<sup>13</sup> as modified by the additional criteria outlined in the *Virginia Cellular Order* and *Highland Cellular Order*.<sup>14</sup> In fact, the United States Court of Appeals for the District of Columbia Circuit has long discouraged “disparate treatment” of “similarly situated parties.”<sup>15</sup> Accordingly, the Commission must apply the current rules to its review of the pending Southern LINC Petitions.

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*Alabama, the state of Florida, the state of Georgia, the state of New York, the Commonwealth of Pennsylvania, the state of Tennessee, and in the Commonwealth of Virginia*, Order, CC Docket No. 96-45, 19 FCC Rcd 16530, 16539-16540, ¶ 21 (2004) (declining to “delay ruling on pending ETC petitions and to impose additional requirement at this time.”) (“*Nextel ETC Order*”).

<sup>10</sup> *Puerto Rico Sun Oil Co. v. EPA*, 8 F.3d 73, 79 (1<sup>st</sup> Cir. 1993) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)) (an agency’s decision cannot be supported based upon rules that the agency has not yet adopted); see also *CSRA Cablevision, Inc.*, 47 FCC 2d 572, ¶ 6 (1974) (“[u]nder the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.”).

<sup>11</sup> Comments of CenturyTel of Alabama, LLC at 4 (“CenturyTel Comments”).

<sup>12</sup> TDS Comments at 3; Rural LECs Comments at 3.

<sup>13</sup> See, e.g., *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235 (D.C. Cir. 1997); *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir. 1978); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

<sup>14</sup> *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (“*Highland Cellular Order*”).

<sup>15</sup> See fn. 13, *supra*.

The Commission's *Virginia Cellular Order* sets forth the requirements that a petitioner must satisfy for ETC status. In establishing those standards, the Commission was aware of the important unresolved policy issues relating to Universal Service, but it determined that further delay in the consideration of ETC petitions was not in the public interest. Balancing the importance of moving to a decision on pending ETC petitions with the unresolved policy issues the Commission held, "[t]he framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission."<sup>16</sup> The Commission elaborated:

[W]e note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially affect the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudice the outcome of that proceeding.<sup>17</sup>

Thus, it is clear that in the *Virginia Cellular Order*, the Commission rejected the approach now advanced by TDS and the Rural LECs<sup>18</sup> that possible future changes to the rules justify delaying consideration of Southern LINC's pending ETC request for designation as an ETC in Alabama and Georgia. Rather, similar to the *Virginia Cellular* decision, the Commission should move forward and decide the pending Petitions on the rules as they currently exist.

CenturyTel's concerns regarding the impact of Southern LINC's designation on the regulatory regime established by the *CALLS Order*<sup>19</sup> are highly exaggerated.<sup>20</sup> Because wireless

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<sup>16</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1564, ¶ 3.

<sup>17</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1569, ¶ 12.

<sup>18</sup> TDS Comments at 2-3; Rural LECs Comments at 2-3.

<sup>19</sup> *Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (subsequent history omitted) ("*CALLS Order*").



ETCs can only receive universal support for the actual number of subscribers lines they serve, a wireless ETC will receive significantly less than the incumbent wireline carrier serving the same area.<sup>21</sup> The Commission has previously rejected this argument in the past<sup>22</sup> and should do so again in this instance.

Although the Commission has considered, and will continue to consider, broad policy issues when evaluating ETC designation petitions, it is neither appropriate nor lawful to reserve universal support to incumbent carriers and existing ETCs while this occurs. Because Southern LINC's ETC offerings are in the public interest, delaying consideration of the Petitions by the Commission prevents consumers in Alabama and Georgia from receiving new advanced services offered by Southern LINC. Accordingly, public interest dictates that the Commission act swiftly in granting Southern LINC's Petitions.

## **II. SOUTHERN LINC'S PETITIONS SATISFY THE ETC DESIGNATION REQUIREMENTS**

In its Petitions, Southern LINC satisfies the Commission's requirements for designation as an ETC and substantially demonstrates that grant of the Petitions are in the public interest. Specifically, Southern LINC outlined how it provides the services and functionalities in Alabama and Georgia supported by the federal universal service program, enumerated in section 54.101(a)

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<sup>20</sup> CenturyTel Comments at 6-7.

<sup>21</sup> *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8932, ¶ 287 (1997) (concluding that competitive ETCs receive universal service support only to the extent it captures subscriber lines formerly served by incumbents or new customer lines).

<sup>22</sup> *Nextel ETC Order*, 19 FCC Rcd at 16540, ¶ 22 (noting the Commission's disagreement with Verizon's arguments that the Commission should not further designate any ETCs because it could have a significant impact on the access charge plan in the *CALLS Order*).

of the Commission's rules.<sup>23</sup> Southern LINC satisfied each of the elements required for ETC designation under section 214(e)(6) of the Communications Act of 1934, as amended (the "Act").<sup>24</sup> Southern LINC demonstrated that it meets the additional conditions established in the *Virginia Cellular Order*, as well as any future requirements imposed by the Commission.<sup>25</sup> In addition, Southern LINC provided with its Petitions service declarations indicating the services it will provide upon ETC designation and confirmed its intent to use available funds for only the expressed permitted purposes.<sup>26</sup> As such, Southern LINC meets the prerequisite conditions for designation as an ETC and respectfully requests that the Commission grant the Petitions immediately.

**A. Southern LINC's Petitions Satisfy All of the Well-Established Requirements for Designation as an ETC**

The requirements for designation as an ETC are well established by the Commission. ETC petitioners are required to demonstrate that they comply with the requirements outlined in section 214(e)(6) of the Act, the *Twelfth Report and Order*,<sup>27</sup> the Commission's *Virginia Cellular* and *Highland Cellular* orders, and that they provide the services and perform the

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<sup>23</sup> 47 C.F.R. § 54.101(a). The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.

<sup>24</sup> 47 U.S.C. § 214(e)(6).

<sup>25</sup> Alabama Petition at 2, 13; Georgia Petition at 2, 13.

<sup>26</sup> Alabama Petition, Ex. 3; Georgia Petition, Ex. 3.

<sup>27</sup> *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscriberhip in Unserved Areas, Included Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) ("*Twelfth Report and Order*").

functionalities described in section 54.101(a) of the Commission's rules. There is no legal or public policy justification for discriminating against Southern LINC by imposing additional requirements on Southern LINC's Petitions. As the comments demonstrate, there is no controversy with respect to whether Southern LINC has satisfied all of the requirements outlined in section 214(e)(6) of the Act, section 54.101(a) of the Commission's rules, the *Twelfth Report and Order*, the *Virginia Cellular Order*, and the *Highland Cellular Order*. Therefore, Commission should promptly designate Southern LINC as an ETC in the requested areas in Alabama and Georgia.

In its comments, CenturyTel contends that the Commission should require Southern LINC to make specific commitments to provide universal service to requesting customers within a specific timeframe.<sup>28</sup> Although applicable law requires that an ETC furnish "communication service upon reasonable request,"<sup>29</sup> nowhere in the Commission's rules is there a requirement for ETCs to provide service within any specific timeframes. There is no legal basis for the requirement. Therefore, it would be inappropriate for the Commission to delay or deny designation of Southern LINC as an ETC on this basis, or to impose this requirement solely on Southern LINC as a condition for granting its Petitions.

CenturyTel's request that the Commission require Southern LINC to "show that they are doing something more than just filing an annual report" for its service quality commitment to be considered "genuine and meaningful" is equally without merit.<sup>30</sup> Southern LINC has already represented it will comply with the ETC designation requirements, including the more stringent

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<sup>28</sup> CenturyTel Comments at 5, 8.

<sup>29</sup> 47 U.S.C. § 201(a).

<sup>30</sup> CenturyTel Comments at 5.

public interest requirements set forth in the *Virginia Cellular Order*.<sup>31</sup> In addition, if designated, Southern LINC has agreed to comply with the CTIA Consumer Code, to submit annual reports regarding the number of consumer complaints per 1000 handsets in service and the number of unfulfilled requests for service issued, and to comply with any applicable consumer protection requirements subsequently imposed by the Commission.<sup>32</sup> Southern LINC reiterates its commitment to provide, as part of its universal service offering, all services supported by the universal service mechanism when it received ETC status, including any minimum local usage requirement imposed by the Commission.<sup>33</sup> In recent decisions, the Commission has held that these additional commitments are “reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*” and has declined to impose any additional requirements on ETC applicants.<sup>34</sup> The Commission need not impose the requirements as CenturyTel suggests, they serve no purpose in furthering the goals of the Act.

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<sup>31</sup> Alabama Petition at 2, 13-16; Georgia Petition at 2, 13-16.

<sup>32</sup> Alabama Petition at 10, 13; Georgia Petition at 10-11, 13.

<sup>33</sup> Alabama Petition at 6; Georgia Petition at 6-7.

<sup>34</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-418 (5<sup>th</sup> Cir. 1999); *see Nextel ETC Order*, 19 FCC Rcd at 16542, ¶ 25 (holding Nextel’s additional commitments to give progress reports on build-outs, report on the number of complaints per 1000 handsets in service, and report the number of unfulfilled requests for service in the public interest but declining to impose additional requirements); *see also Federal-State Joint Board on Universal Service, Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, Order, CC Docket No. 96-45, DA 05-259 at ¶ 39 (rel. Jan. 31, 2005) (“*PSC ETC Order*”) (holding PSC’s additional commitments to comply with the CTIA Consumer Code, report on the number of complaints per 1000 handsets in service, and report the number of unfulfilled requests for service in the public interest but declining to impose additional requirements).

CenturyTel, TDS, and the Rural LECs also seek to have the Commission require Southern LINC to provide detailed build-out plans demonstrating Southern LINC's commitment to provide quality service throughout the designated service area as a prerequisite for ETC designation.<sup>35</sup> As indicated in its Petitions, the priority under which a build-out plan is to be undertaken is subject to change depending upon requests for service and other market factors, making specific plans difficult to anticipate.<sup>36</sup> The exact location of any tower is dependent upon factors relating to land and electricity availability, within the overall context of providing more comprehensive service coverage. The uncertainty of the construction plans is due to the realities of locating appropriate sites for construction. Nothing in the *Virginia Cellular Order* requires that an applicant have begun construction or submitted plans for construction that it commits not to alter. Nor should the Commission adopt such a requirement. It is unrealistic to expect an applicant to submit construction plans that will not change prior to applying for ETC status, particularly given that the purpose of ETC funding is to ensure the build-out of quality, affordable services to rural America.<sup>37</sup> Contrary to claims by the Rural LECs and TDS,<sup>38</sup> Southern LINC remains committed to make improvements, including in rural, high-cost areas or other areas where current service quality may need improvement. As such, the Commission should not impose this additional requirement.

Both the Rural LECs and TDS claim that the Commission should deny Southern LINC's Petitions because it appears that Southern LINC's actual service area is not currently as extensive

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<sup>35</sup> CenturyTel Comments at 6; TDS Comments at 7; Rural LECs Comments at 8.

<sup>36</sup> Alabama Petition at 11-12; Georgia Petition at 12.

<sup>37</sup> 47 U.S.C. § 254.

<sup>38</sup> Rural LECs Comments at 6; TDS Comments at 6.

as its licensed service.<sup>39</sup> Similarly, CenturyTel argues that designation is inappropriate because Southern LINC is not currently providing all services throughout the designated area.<sup>40</sup> Both of these claims are immaterial in evaluating Southern LINC's pending Petitions. Commission precedent does not require an ETC petitioner to demonstrate it provides all of the service throughout the entire designation service area prior to ETC designation status.<sup>41</sup> Critically, both TDS and the Rural LECs recognize this fact.<sup>42</sup> Southern LINC presently provides quality service, including nearly all of the USF supported services, throughout most of Alabama and Georgia. The fact that Southern LINC already serves much of this area underscores Southern LINC's firm commitment to the citizens of these states. However, USF support would assist Southern LINC not only to provide the USF supported services to the citizens of Alabama and Georgia, but also to build out and improve its system throughout the designated areas. As such, the claims of the commenters warrant no additional consideration by the Commission in its evaluation of Southern LINC's Petitions.

In addition, CenturyTel asserts that the Commission should deny Southern LINC's Petitions based on the possibility of potential dilution of the amount of support available to

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<sup>39</sup> Rural LECs Comments at 5-6; TDS Comments at 5.

<sup>40</sup> CenturyTel Comments at 8.

<sup>41</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1573, ¶ 23 (noting that Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC); *see also Nextel ETC Order*, 19 FCC Rcd at 16539, ¶ 19 (citing *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15175, ¶ 17 (2000)) (noting that a carrier's inability to demonstrate that it can provide ubiquitous service at the time of designation does not preclude such designation).

<sup>42</sup> Rural LECs Comments at 6; TDS Comments at 5.

incumbents.<sup>43</sup> The Commission has repeatedly rejected these types of speculative funding arguments as being beyond the scope of an individual ETC designation proceeding and should do so again here. Indeed, in the *Virginia Cellular Order*, the Commission observed that the impact of any one competitive ETC is, at best, inconclusive and that the appropriate forum to address any funding concerns is in the ongoing *Portability* proceeding.<sup>44</sup> CenturyTel does not provide any data to support its claims. CenturyTel does not demonstrate any harm to its ability to compete with Southern LINC for the provision of service, or that Southern LINC's designation will compromise its ability to continue serving as an ETC. The Commission has repeatedly recognized that a party opposing ETC designations bears the burden of supporting such claims with specific evidence and cannot merely rely on unsubstantiated assertions.<sup>45</sup> The Commission must reject the claims of CenturyTel.

CenturyTel, TDS, and the Rural LECs also assert that the Commission should deny the Petitions because there are already other wireless ETCs serving the same area.<sup>46</sup> Applicable law does not disqualify a petitioner for ETC designation on the basis that there are already other

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<sup>43</sup> CenturyTel Comments at 3-4.

<sup>44</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1577, ¶ 31 (citing to *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (2002)) (“*Referral Order*”); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Process*, Public Notice, CC Docket 96-45, 18 FCC Rcd 1941 (2003)).

<sup>45</sup> *See Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, 17 FCC Rcd 23532, 23542, ¶ 26 (2002) (holding that “[t]he parties opposing this designation have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality to consumers in rural areas or result in loss of network efficiency.”).

<sup>46</sup> CenturyTel Comments at 4; TDS Comments at 8; Rural LECs Comments at 9.

providers in the area. The Commission is not limited to designating only one wireless carrier as an ETC in a specific area. In fact, the Commission has repeatedly rejected claims that designations of multiple ETCs is not in the public interest, noting that “competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.”<sup>47</sup> As noted by the Commission in its *Nextel ETC Order*:

[a]lthough Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission’s universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation.<sup>48</sup>

References by TDS and the Rural LECs to comments filed in other pending ETC designation proceedings fails to demonstrate that the requested area cannot support competition.<sup>49</sup> The Commission should not consider this information as satisfying TDS or the Rural LECs burden of proof. Designating Southern LINC as an ETC will facilitate competition in the provision of universal service, bringing consumers in Alabama and Georgia new telecommunications services, promoting rapid development of new technologies in those areas.

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<sup>47</sup> *Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, Docket No. 96-45, 16 FCC Rcd 48, 57, ¶ 22 (2000), *aff’d*, 16 FCC Rcd 19144 (2001) (“*Western Wireless Wyoming ETC Order*”) (finding “no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural area.”).

<sup>48</sup> *Nextel ETC Order*, 19 FCC Rcd at 16539, ¶ 20.

<sup>49</sup> TDS Comment at 8, fn. 18; Rural LECs Comments at 9, fn. 24.



**B. Southern LINC is Committed to Providing Universal Service to Customers Upon Reasonable Request in Compliance With the *Virginia Cellular Order***

Applicable law requires that an ETC furnish “communication service upon reasonable request”<sup>50</sup> within the areas for which it seeks designation as an ETC. The law does not require an ETC to expend unlimited resources to serve every single customer, regardless of whether doing so would require an unreasonable amount of time, effort or expense. In its comments, CenturyTel criticizes the six-step service evaluation process that Southern LINC has set forth in its Petitions for customer requesting service that is within Southern LINC’s designated service area but outside the existing coverage of Southern LINC’s system as “an attempt by Southern LINC to mimic the steps set forth by Virginia Cellular in its petition.”<sup>51</sup> CenturyTel argues that this is insufficient, but fails to acknowledge that the Commission has already granted ETC designations based on the same representations Southern LINC enumerated for provisioning service in compliance with the *Virginia Cellular Order*.<sup>52</sup> CenturyTel’s assertion that the evaluation process is insufficient is erroneous.

**C. Southern LINC Meets the Commission’s Requirements Regarding E911 Deployment, Including Phase II E911 Deployment**

In their comments, CenturyTel, TDS, and the Rural LECs question whether Southern LINC has met its Phase II E911 requirements where public emergency service providers have requested E911.<sup>53</sup> Although the Commission has previously designated other wireless providers

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<sup>50</sup> 47 U.S.C. § 201(a).

<sup>51</sup> CenturyTel Comments at 5.

<sup>52</sup> See *Nextel ETC Order*, 19 FCC Rcd at 1568, ¶ 11; see also *PSC ETC Order* at ¶ 18.

<sup>53</sup> CenturyTel Comments at 8; TDS Comments at 6; Rural LECs Comment at 6-7.

as ETCs despite not provisioning E911 service,<sup>54</sup> Southern LINC meets the FCC's requirements for E911 service, as indicated in its Petitions. For the sake of clarification, this capability applies to both Phase I E911 and Phase II E911 deployment, throughout Southern LINC's service area.

**D. Southern LINC Will Not Seek Redefinition of the Ardmore Telephone Service Area in Alabama**

In their comments, the Rural LECs request that the Commission deny Southern LINC's Petitions with respect to the Ardmore Telephone service area in the state of Alabama, noting that Southern LINC is seeking to serve an area "less than the entire Ardmore Telephone study area."<sup>55</sup> Southern LINC serves nearly the entire service area of Ardmore Telephone, except some limited portions in the New Market rate center. Nonetheless, in lieu of seeking redefinition of the Ardmore Telephone service area, Southern LINC, by separate filing, will amend its Alabama Petition for designation in the rural portions of its service area and withdraw its request for ETC designation in the Ardmore Telephone service area, including the areas of Ardmore and Elkmont where Southern LINC currently provides service.

**E. Southern LINC Will Not Seek Redefinition of the Blue Ridge Telephone Service Area in Georgia**

In its comments, TDS requests that the Commission deny Southern LINC's Petitions with respect to the Blue Ridge Telephone service area in the state of Georgia, noting that Southern LINC is seeking to serve an area "less than the entire Blue Ridge Telephone study area."<sup>56</sup>

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<sup>54</sup> See, e.g., *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502 (2002) (designating Guam Cellular and Paging, Inc. ("Guamcell") as an ETC, even though Guamcell provided no E911 service to its subscribers).

<sup>55</sup> Rural LECs Comments at 4-5.

<sup>56</sup> TDS Comments at 4-5.

Southern LINC serves portions of the Blue Ridge Telephone service area, except portions in the Blue Ridge and Lakewood rate centers. Nonetheless, in lieu of seeking redefinition of the Blue Ridge Telephone service area, Southern LINC, by separate filing, will amend its Georgia Petition for designation in the rural portions of its service area and withdraw its request for ETC designation in the Blue Ridge Telephone service area.

### **III. GRANTING SOUTHERN LINC'S PETITIONS SERVES THE PUBLIC INTEREST**

The Commission should find that Southern LINC has satisfied the statutory prerequisites set forth in section 214(e)(1) of the Act<sup>57</sup> as well as the Commission's considerations outlined in its *Virginia Cellular Order* and *Highland Cellular Order*.<sup>58</sup> Consistent with the stringent public interest standards for the rural portions of its requested service areas, grant of the Petitions will serve the public interest without harming the commenters. Designation of Southern LINC as an ETC will allow Southern LINC to provide a valuable competitive alternative to the incumbents, benefiting consumers in Alabama and Georgia.

One of the principal goals of the Telecommunications Act of 1996 is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."<sup>59</sup> As noted by CTIA in its comments, designation of CMRS providers promotes the goals of the Act and provides unique benefits to consumers.<sup>60</sup> The

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<sup>57</sup> 47 U.S.C. § 214(e)(1).

<sup>58</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1575, ¶ 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, ¶ 21.

<sup>59</sup> Telecommunications Act of 1996, Pub. Law No. 104-104, 100 Stat. 56 (1996).

<sup>60</sup> CTIA Comments at 4-5.

Commission has long acknowledged the benefits of designating CMRS providers as ETCs, concluding that designation “promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>61</sup>

In particular, Southern LINC adds the element of mobility to the provision of USF supported services – a valuable option that the incumbent wireline LECs cannot match. This essential difference is particularly beneficial to consumers in rural areas, including remote roads and highways, where wireline telephones are more widely spaced out than in concentrated urban areas. As the Commission emphasized in its *Virginia Cellular Order*:

. . . the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.<sup>62</sup>

As the Commission is aware, the Universal Service Program is not only intended to bring local phone service to consumers in rural, high cost and insular areas, but it is also intended to ensure that these consumers have:

access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>63</sup>

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<sup>61</sup> *Western Wireless Wyoming ETC Order*, 16 FCC Rcd at 55, ¶ 17.

<sup>62</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1576, ¶ 29.

<sup>63</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1569, 1576, ¶¶ 12, 29, and Separate Statement of Chairman Michael K. Powell at ¶ 1 (“we recognize the unique value that mobile services provide to rural consumers by giving added substance to the public interest standard by which we evaluate wireless eligible telecommunications carriers.”).

Under the Commission's Universal Service policies, consumers in Alabama and Georgia deserve the ability to choose a provider, to access new technologies, and to select from a menu of innovative services.<sup>64</sup> More choice drives down costs of service, creates efficiencies, and provides genuine competitive alternatives to incumbents like CenturyTel, TDS, and the Rural LECs. The record in this proceeding demonstrates that Southern LINC's designation as an ETC will bring these telecommunications benefits to Alabama and Georgia telecommunications users. Granting the Petitions brings benefits of competition to an underserved marketplace and is in the public interest.

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<sup>64</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1576, ¶ 29.

#### IV. CONCLUSION

Southern LINC's Petitions demonstrate that it meets the legal and policy requirements necessary for designated as an ETC pursuant to sections 214(e) and 254 of the Act,<sup>65</sup> as CTIA observed in its comments. Further, Southern LINC's Petitions comport with the more stringent public interest tests and additional reporting requirements pursuant to the Commission's *Virginia Cellular Order*, and thus designation of Southern LINC as an ETC will further the promotion and advancement of universal service in Alabama and Georgia. CenturyTel, the Rural LECs, and TDS fail to identify any valid basis for delaying or denying Southern LINC's Petitions. Based on the foregoing, Southern LINC respectfully requests that the Commission expeditiously grant its Petitions.

Respectfully Submitted,

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Date: March 1, 2005

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<sup>65</sup> 47 U.S.C. §§ 214(e) and 254.

## CERTIFICATE OF SERVICE

I, Erin W. Emmott, hereby certify that on this 1<sup>st</sup> day of March 2005, a true and correct copy of the foregoing Reply Comments to the Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, FCC 97-419, DA 05-269, was sent to the following persons as indicated below:

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